IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.795 OF 2006

ALONGWITH
CIVIL APPLICATION NO.1215 OF 2006
IN
SECOND APPEAL NO.795 OF 2006

ALONGWITH
WRIT PETITION NO.5582 OF 2006

Mrs.Shahnaz Taimur Patel ....Appellant
V/s.
Shravan Gangaram Ghatti & Anr. ....Respondents

Mr.M.L. Patil for Appellant.
Mr.Ashok J. Chougule for Respondent No.1.

CORAM : V.M. KANADE, J.
DATED : 12th JULY, 2007.

P.C:-

1. Heard learned counsel for the Appellant and learned counsel for Respondent No.1.

2. Both the Second Appeal and Writ Petition can be disposed of by a common order.

3. Brief facts are that the Appellant in Second Appeal No.795/06 filed suit against the Respondents for eviction on the ground of arrears of rents. Respondents also filed suit against the Appellant for specific performance of the agreement which was entered into between parties for transfer of suit premises in favour of the Respondents. The Trial Court dismissed the suit for specific performance which was filed by the Respondents/defendants inter alia on the ground of limitation and finding was recorded that said suit filed by the Respondents/defendants was barred by limitation. However, suit filed by the Appellant in Second Appeal was allowed and order of eviction was passed against the defendant. Being aggrieved by the aforesaid order, both the parties filed appeals in the lower Appellate Court. The Lower Appellate Court allowed the appeal which was filed by the Respondents/defendants and set aside decree and judgment of eviction which was passed against them. Similarly suit for specific performance was also decreed in favour of tenant.

4. Learned counsel appearing on behalf of the Appellant submitted that the lower Appellate Court allowed the Appeal filed by the Respondent

without taking into consideration the issue of limitation. He submitted that therefore, said order was liable to be set aside. He submitted that order which was passed by the lower Appellate Court and which was challenged in the Writ Petition was also liable to be set aside since the Lower Appellate Court has held that the tenant was in possession of the property in view of agreement which was executed between the parties. It is an admitted position that the Trial Court had framed an additional issue being issue issue No.3A wherein issue of limitation was framed and said issue was answered by the the Trial Court by holding that the suit filed by the Respondent for specific performance was barred by limitation.

5. On perusal of order of Lower Appellate Court, it is evident that this point was not framed for considerations and also has not been considered in the entire judgment and order. This being position, order passed by the lower Appellate Court is liable to be set aside on this ground alone. Hence, Second Appeal is allowed. Order passed by 3rd Additional District Judge, Sangli dated 23rd March, 2006 in Regular Civil Appeal No.577/1994 is quashed and set aside. Similarly, order passed by 3rd

Additional District Judge, Sangli dated 23/03/2006 in Regular Civil Appeal No.578/1994 is also quashed and set aside. Both these matters are remanded back to the Lower Appellate Court. The Lower Appellate Court shall decide the matters afresh after framing point of limitation in Civil Appeal No.577/94 and thereafter decide both the appeals on merits and in accordance with law. All questions are kept open. Civil Application is disposed of accordingly.

V.M. KANADE, J.